January 27, 2011

Philip Isenberg, Chair
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

RE: NOTICE OF PREPARATION OF DRAFT EIR FOR THE DELTA PLAN

Dear Chairman Isenberg,

This letter is submitted as the comments of the Bay Institute regarding the Notice of Preparation (NOP) of a Draft Environmental Impact Report (Draft EIR) for the Delta Stewardship Council's Delta Plan. These comments supplement the January 25, 2011, "Environmental, Environmental Justice, and Fishing Community Joint Scoping Recommendations for the Delta Stewardship Council" submitted jointly with many other organizations. Our main concern in these comments is to ensure the integrity and adequacy of the process for developing alternatives for evaluation in the draft EIR.

Figure 2 on page 15 of the NOP suggests that alternatives (the Bookend B side of the range) that do not reduce export water supply reliance on the Delta or that constrain ecosystem improvements to current regulatory requirements would be considered for inclusion in the Delta Plan. In our view, such alternatives would not fulfill the legislative mandate to the Council for developing the Plan.

All alternatives considered in the draft EIR must be intended and designed to achieve the goals and implement the policies laid out in SBX7 1. For instance, Section 85021 of the Act specifically establishes the state's policy to reduce water supply reliance on the Delta. No countervailing policy for increasing water supply reliance on the Delta was established in the authorizing legislation. In achieving the overarching co-equal goal of providing a more reliable water

supply for the state, the Plan's alternatives should all seek to implement the policy of reducing Delta reliance.

Similarly, the text of Sections 85020, 85302(c) and 85302(e) of the Act establish the overarching co-equal goal of restoring a healthy Delta ecosystem and the policy of implementing large-scale restoration of habitat, flows and other ecosystem components in order to support ecosystem function and viable populations of native species. Existing regulatory requirements such as the biological opinions prepared pursuant to the federal Endangered Species Act are not intended and do not attempt to achieve the level of restoration and recovery that the Plan is charged with. To be consistent with the Act's goals and policies, the Plan's alternatives should all seek to implement the policy of large-scale restoration of key ecosystem components.

The Plan's alternatives should vary by how the goals established in the Act are achieved, and by how much – not whether these goals are achieved. In the case of reducing water supply reliance on the Delta, alternatives should be developed that implement this policy to different levels of reduced reliance (e.g., varying from 25 to 50%) and through a mix of different strategies (i.e., employing conservation, regional projects, new and improved infrastructure and other approaches to a greater or lesser degree). Again, in the case of restoring a healthy Delta ecosystem, alternatives should be developed that achieve the goal at different thresholds of success (e.g., restoring native fish and wildlife populations equivalent to different baseline periods) and through a mix of different implementation strategies (i.e., restoring habitat and flow and implementing other measures to a greater or lesser degree).

Translating broad goal and policy statements into clear and measurable targets is a critical and foundational step in ensuring the development of an adequate and effective Plan. These targets can and should be used to guide the adoption of more specific, quantified objectives which can subsequently be employed to help develop and evaluate alternatives and select a preferred alternative. Such targets represent measurable expressions of the overarching co-equal goals – a statement of what the desired end-states of a healthy Delta ecosystem and a reliable water supply would look like, expressed in terms of desired outcomes and not in terms of implementation mechanisms.

For ecosystem restoration, these targets should be expressed in terms that best address the ecosystem characteristics described in Section 85302(c), including:

- restoration and maintenance of specific attributes of population viability (abundance, distribution, diversity, and productivity) for a suite of native species.

- restoration and maintenance of key ecosystem functions (including the replication and/or simulation of natural hydrological regimes and the areal extent, quality, diversity and connectivity of habitat types);

- reduction in extinction risk for species of concern; and

- achievement of statutory goals for endangered species recovery and restoration.

For water supply reliability, these targets should be expressed in terms that best address the reliability characteristics described in Section 85302(d), including:

- the degree of regional self sufficiency in areas currently exporting from the Delta

- reduced risk of disruption of planned water supply deliveries; and

- compliance with existing and projected water quality requirements.

Finally, criteria for prioritizing and phasing actions that will be considered in the Draft EIR need to be provided. Given the complexity and massive alteration of the Delta ecosystem, the severe competition between users of the Delta's resources, and the challenges of a changing climate and other factors, the need for a comprehensive and long-term plan for the Delta that is robust through the year 2100 is obvious and urgent. But the need to identify and develop a schedule for implementing high-priority actions during the early phases of Plan implementation is equally obvious and urgent. The Delta ecosystem is experiencing an ecological collapse, many populations are at high risk of extinction, and there are limited resources for implementing remedial measures. Accordingly, prioritization and phasing criteria should be developed and applied to alternative formulation that address the following factors:

- greatest need for immediate improvement (such as delta and longfin smelt populations);

- greater certainty regarding potential benefits (based on the scientific literature and other evidence to the extent possible);

- greater potential magnitude and duration of benefits (based on the scientific literature and other evidence to the extent possible);

- greater potential for information richness (i.e., the ability to resolve critical uncertainties regarding ecosystem response or other factors); and,

- reversibility (in order to avoid the potential for creating stranded assets)

We will provide you with more detailed recommendations in the near future regarding specific ecosystem and reliability targets and prioritization criteria to be used in developing the Plan.

Thank you for the opportunity to comment on the NOP for the Delta Plan. We look forward to working with you to develop a Plan that fully realizes the Council's legislative mandate and catalyzes urgent and long-delayed changes in how the Delta is managed.

Sincerely,

Gary Bobker
Program Director